

Appl. No. 10/078,042
Docket No. 8430
Amdt. dated October 2, 2006
Reply to Office Action mailed on June 30, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1 – 10 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 6 and 8 have been amended to include the term “medically” to modify the term relevant. Support for the amendment is found at page 9, lines 14 – 18 of the specification.

Claim 2 has been amended to replace the term “Quality Window” with the term “data analysis.” Support for this amendment is found at page 15, lines 5 – 6 of the specification.

Claims 11 – 13 are canceled without prejudice.

Rejection Under 35 USC §112, Second Paragraph

The Office Action States that “[t]he applicants use the term ‘Quality Window’ software in claim 2 and this term is a trademark which refers to a specific type of software . . . the examiner recommends amending the claims so that they recite a more generic and permanent term.” (The Office Action, page 2, third paragraph).

Applicants have amended claim 2, as required by the Office Action. Applicants believe this amendment fully addresses the rejection, and as a result, Applicants respectfully request that the rejection of claim 2 under 35 U.S.C. §112 second paragraph be withdrawn.

Rejection Under 35 USC §102(a) Over Sheehan

Claims 1 – 2, and 5 – 13 have been rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Pat. No. 6,319,199 issued to Sheehan, et al., (hereinafter “Sheehan”). Applicants respectfully traverse the rejection.

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Applicants respectfully point out that the Sheehan reference has a grant date of November 20, 2001, which is after the priority date of February 20, 2001 of the present application, and therefore, Sheehan cannot be prior art under 35 U.S.C. 102(a). However, Applicants note that Sheehan may qualify as prior art under 35 U.S.C. 102(e), and consequently, Applicants will address a 102(e) rejection. However, it is to be understood that Applicants are in no way waiving the right to remove Sheehan as a reference if it were to be applied in a 102(e) rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found . . . in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987). In the instant case, the Office Action states that “[a]s per claim 1, a system to improve the management of an individual’s health (Sheehan abstract), the system including . . . at least one data analysis mechanism generating insights relevant to a particular health condition” (The Office Action, page 3, first full paragraph). However, Sheehan does not teach a data analysis mechanism generating insights medically relevant to a particular health condition, such as the system of claim 1 of the present application.

According to the Office Action the data analysis mechanism of Sheehan, and the analysis performed thereby, is disclosed at col. 7, lines 4 – 18. (The Office Action, page 3, line 14). With regard to the Sheehan section cited by the Office Action, Sheehan discloses “a process for pattern matching and image analysis.” (Sheehan, col. 7, lines 4 – 5). Sheehan discloses that “[the] digital camera element 206 captures an image [and] the captured image is compared with patterns or templates stored in memory 210 . . . if the image is a good match . . . the user is alerted.” (Sheehan, col. 7, lines 9 – 14).

As Applicants understand Sheehan, the device of Sheehan attempts to help a user photograph the eardrum of the user and when the user obtains an acceptable photograph, the device alerts the user of the user’s success. However, simply because the Sheehan device may perform data analysis, does not mean that the Sheehan device generates insights medically relevant to a particular health condition, such as the system of claim 1

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of the present application. It is Applicants' position that the alert produced by the device of Sheehan does not amount to medically relevant insight as contemplated by the system of claim 1 of the present application.

Claim 1 of the present application discloses a system to improve the management of an individual's health, the system including: a data measurement mechanism generating data relevant to a particular health condition; a data acquisition mechanism transferring the data relevant to a particular health condition from the data measurement mechanism to a storage medium; at least one data analysis mechanism generating insights medically relevant to a particular health condition wherein the data analysis mechanism performs at least one analysis selected from the group of: population comparison, multi-variate analysis, attribute data analysis, and reliability engineering analysis; and an information presentation mechanism displaying the medically relevant insights.

The present application states "[s]uch useful information includes the need to intervene, assessment of the efficacy of a treatment, definition of most common or likely causes or effective remedies or treatments, or identification of other medically relevant insights or actions." (Page 16, lines 9 – 11 of the present application). The present application also states that "[o]nce acquired, the data is analyzed to determine if some level of intervention may be required. Such intervention may include medical treatment, consultation with a physician or other trained medical professional, and/or the implementation of or compliance with a previously defined treatment plan." (Page 16, lines 1 – 4 of the present application).

The device of Sheehan, when positioned correctly in the ear, merely alerts the user of such correct placement, and the user may then successfully photograph the eardrum so long as the device is not repositioned prior to photographing. Additionally, the Sheehan device provides the same positioning alert regardless of physical condition or well being of the user. It would be understood by one of ordinary skill in the art that the data analysis performed by the Sheehan device merely provides a positioning system that is independent of any medical condition, and consequently, does not result in a

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determination of whether or not interaction with a physician may be required. Thus, even though the device of Sheehan may provide a user with an alert to tell the user when the device is positioned properly in the ear, Sheehan clearly does not teach a data analysis mechanism generating medically relevant insights, such as the system of claim 1. Therefore, Sheehan does not teach each and every element of claim 1, and since the arguments presented are equally applicable claims 6 and 8, Applicants respectfully submit that a rejection of claims 1 – 2 and 5 – 8 under 35 U.S.C. §102(e) would be improper.

With regard to claim 9, the Office Action states “Sheehan teaches a method for improving the health of an individual” (The Office Action, page 5, lines 8 – 9). Applicants point out that the abstract of Sheehan discloses “[a] portable data collection device [that] is provided for diagnostic image and data collection at a remote location.” Even though the portable data collection device may increase the convenience and/or efficiency of medical treatment/diagnosis, there is no teaching of a health improvement found in the particular portion of Sheehan cited by the Office Action.

“In rejecting claims for want of novelty . . . the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.” (37 CFR Section 1.104(c)(2), emphasis added). Applicants respectfully submit that the abstract does not provide the necessary disclosure to support the Office’s position and request that the Office more specifically designate the particular part of Sheehan that teaches a method for improving the health of an individual.

Additionally, the Office Action cites Sheehan at col. 4, lines 12 – 18 to provide support for “selecting at least one health parameter appropriate for the particular individual based on the individual’s medical condition and medical history . . . or any other health parameter of interest to the individual” (The Office Action, page 5, lower case a). However, at col. 4, lines 12 – 18, Sheehan discloses “[o]ther devices that may adapted in accordance with present invention . . . include . . . rhinoscopes,

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laryngoscopes” Sheehan may list several devices which are capable of measuring health parameters, but Sheehan does not teach selecting at least one health parameter appropriate for an individual, such as the method for improving the health of an individual contemplated by claim 9 of the present application. Therefore, because Sheehan does not teach each and every element of claim 9, Applicants respectfully submit that a rejection of claim 9 under 35 U.S.C. 102(e) over Sheehan would be improper.

The Office Action also cites Sheehan at col. 2, lines 23 – 46 to provide support for “measuring the at least one health parameter of interest and pertinent environmental or qualitative information to produce data.” However, the particular portion of Sheehan cited by the Office Action does not disclose any steps in which there is a measuring of a health parameter. Thus, in accordance with 37 CFR Section 1.104(c)(2), Applicants respectfully request that the Office more specifically designate the portion of Sheehan that teaches measuring at least one health parameter of interest, as contemplated by the method in claim 9 of the present application. In the absence of such designation, Applicants respectfully submit that Sheehan does not teach each and every element of claim 9, and as result, a rejection under 35 U.S.C. §102(e) over Sheehan would be improper.

Rejection Under 35 USC §103(a) Over Sheehan in view of Ekblad

Claim 3 has been rejected under 35 U.S.C. 103(a) over U.S. Pat. No. 6,319,199 issued to Sheehan, et al., (hereinafter “Sheehan”) in view of Ekblad (U.S. Pat. No. 5,920,478). Applicants respectfully traverse the rejection.

For the sake of brevity, and in light of the preceding arguments, Applicants respectfully submit that neither Sheehan nor Ekblad, alone or in combination, teach or suggest each and every element of claim 3. As mentioned above, Sheehan does not teach or suggest an information presentation mechanism displaying medically relevant insights, such as the system of claim 1. Assuming, *arguendo*, that the combination is proper, the Office has made no attempt to show that Ekblad cures Sheehan’s lack of disclosure with

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regard to claim 3, and thus, there can be no teaching or suggestion of each and every element of claim 3. Therefore, Applicants respectfully request that rejection of claim 3 under 35 U.S.C. 103(a) over Sheehan in view of Ekblad be reconsidered and withdrawn.

Rejection Under 35 USC §103(a) Over Sheehan in view of Loman

Claim 4 has been rejected under 35 U.S.C. 103(a) over U.S. Pat. No. 6,319,199 issued to Sheehan, et al., (hereinafter "Sheehan") in view of U.S. Pat. No. 6,642,592 issued to Loman, et al., (hereinafter "Loman"). Applicants respectfully traverse the rejection.

For the sake of brevity, and in light of the preceding arguments, Applicants respectfully submit that neither Sheehan nor Loman, alone or in combination, teach or suggest each and every element of claim 4. As mentioned above, Sheehan does not teach or suggest an information presentation mechanism displaying medically relevant insights, such as the system of claim 1. Assuming, *arguendo*, that the combination is proper, the Office has made no attempt to show that Loman cures Sheehan's lack of disclosure with regard to claim 4, and thus, there can be no teaching or suggestion of each and every element of claim 4. Therefore, Applicants respectfully request that rejection of claim 4 under 35 U.S.C. 103(a) over Sheehan in view of Ekblad be reconsidered and withdrawn.

Conclusion

This amendment represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. Applicant respectfully requests that the rejection of the claims be reconsidered in light of the claim amendments and arguments set forth herein and that claims 1 – 10 be allowed. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

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